

# **The Plan of Action for the Development of Guidelines for Regional Environmental Impact Assessment of Shared Ecosystems of East Africa**

## **Project Summary**

### **Background to the Project**

There has been considerable growth in environmental awareness among the peoples and governments of East Africa (Kenya, Uganda and Tanzania) over the last two decades. Environmental concerns that were historically confined to scientific and technical enterprises have moved to the mainstream of public policy and politics. This is manifested in the evolution of national environmental policies, laws, plans, programmes, institutions, and in the manifestos and pronouncements of policy-makers and politicians across the region. Indeed, more than ever, environmental matters became important considerations for both national governments and civil society in East Africa.

This growth of environmentalism, coupled with the resurgence of regional cooperation and integration with the creation of the East African Community (EAC), have stimulated concern for the management of shared ecosystems. It is increasingly recognized that the economies of the three countries are ecologically interdependent. Economic activities such as fisheries, tourism and agriculture are based on shared ecosystems. East Africa's fisheries depend on the sustainability of Lake Victoria, for example. Cross border ecosystems, including the Serengeti and Maasai Mara and mountain ecosystems such as Kilimanjaro and the Ruwenzori are critical to sustainability of regional tourism. The management of these ecosystems is thus not just a matter of national concern but of regional interest as well.

It is in recognition of regional ecological interdependency that the treaty establishing the EAC includes provisions for cooperation in the management of shared ecosystems. Article 112(2a) commits partner states "to develop capabilities and measures to undertake environmental impact assessment of all development project activities and programmes". Article 112(2j) further commits EAC member states to "harmonize their policies and regulations for the sustainable and integrated management of shared natural resources and ecosystems."

Partner states have initiated a number of processes and activities to implement these provisions. In November 1998, the Council of Ministers of the EAC directed that a more comprehensive programme on the control of invasive weeds be initiated. A team of experts developed a "Regional Strategy for the Control of Water Hyacinth and Other Invasive Aquatic Weeds" and a "Regional/Harmonized Action Plan for Implementation". The reports recommended that a regional Environmental Impact Assessment (EIA) be conducted for the control of water hyacinth. The EAC Ministerial Committee on Water Hyacinth approved the Regional Strategy and Action Plan on August 19, 1999.

A meeting of the Sectoral Committee on Environment of the EAC was held in Kisumu, Kenya on 8-10 November 1999 to consider, among other things, regional environmental impact assessment. The committee's recommendations were that: (a) a regional team of

experts to carry out a regional environmental impact assessment study of the control and utilization of water hyacinth and other invasive weeds be established; and (b) regional environmental impact assessment guidelines for shared ecosystems be developed. These recommendations were adopted by the 14<sup>th</sup> Meeting of the Permanent Tripartite Commission held on November 30, 1999. Specific TOR for implementing both the regional environmental impact assessment study on the control of the water hyacinth and other invasive weeds, and for the common or regional environmental impact assessment guidelines for shared ecosystems were developed by the EAC Committee on Environment and Natural Resources at its meeting of 2-4 August 2000 in Kisumu, Kenya.

ACTS with the Regional Economic Development Support Office (REDSO) of the United States Agency for International Development (USAID) has entered into a cooperative agreement to support the EAC's efforts to develop guidelines for regional environmental assessment of shared ecosystems of East Africa.

### **Problem Statement**

The East African region is endowed with a vast array of ecosystems, from coastal habitats to savannah woodlands and grasslands, dry and moist mountain forests to fresh water habitats and arid and desert landscapes. The region is a biodiversity hot spot with great diversity of landforms, ecosystems and wild species of flora and fauna. Its ecosystems extend far and wide and often cut across political boundaries that define the sovereignty of individual countries. Large areas of the three East African countries are designated as protected areas in the form of game reserves and national parks. Over 38% of Tanzania's, 27% of Uganda's and 10% of Kenya's total land areas are protected areas.

The shared ecosystems of East of Africa include the Taita Hills-Eastern Arc Mountain forests of the southern end of the Kenya and the northern Tanzania border; Minziro-Sango Bay swamp forest, located in south- western Uganda and northern Tanzania along the Lake Victoria; Mt. Elgon shared by Kenya and Uganda, Lake Victoria shared by the three East African countries and Maasai Mara-Serengeti ecosystems (shared by Kenya and Tanzania).

The shared ecosystems of East Africa are rich in genetic diversity and form the foundation of the region's ecological stability and economic development. They are the basis for agriculture, fisheries, tourism and industrial development. However, these ecosystems are faced with increasing threats. For example, there is growing evidence that the Taita Hills-Eastern Arc Mountain area is being deforested at rapid rates. There is also evidence of pollution of Lake Victoria and degradation of wildlife in the Maasai Mara-Serengeti ecosystem. The destruction and degradation of these shared ecosystems undermine both national and regional economies. Indeed, these phenomena potentially undermine prospects of achieving economic recovery and environmental sustainability.

The causes of environmental degradation and the destruction of the ecosystems are many, complex and interrelated. They include the following:

- The rapidly growing human population densities in and around fragile ecological systems. Many rural households living around and sometimes in shared ecosystems lack appropriate technologies to practice environmentally sound

economic activities. They use technologies that are not suited to the ecological conditions.

- National environmental policies and programmes have not explicitly provided for regional management of shared ecosystems. They are focused on promoting resource management within national territorial boundaries. They lack regional aspects of ecosystem management. The absence of common regional policies for transboundary or shared ecosystem management is perhaps one of the major factors accounting for the lack of a coordinated approach to some of the environmental problems associated with Lake Victoria and several other shared ecosystems. Each of the three East African countries tends to apply their own, often isolated, environmental impact assessment approaches.
- There is also a limited knowledge of structures and productive potentials of many of the shared ecosystems. Indeed our knowledge of the content of ecosystems such as Lake Victoria is fairly limited. Our understanding of their potential to regenerate and to provide new goods and services is also not inadequate. There is, thus, a need for the EAC countries to establish concerted and collective efforts to undertake ecological studies on and monitoring of shared ecosystems.

It is in light of these shortcomings, there is a growing urgency for the EAC to institute policies, guidelines, laws and programmes to promote cooperation in the conservation and sustainable use of shared ecosystems in the sub-region. The member states need to develop and adopt long-term guidelines and policies to assess the impacts of economic and development activities on these ecosystems (ACTS 2000, EAC 2000). Environmental assessment enables the identification and application of environmentally sound approaches to manage and ensure the sustainability and biophysical integrity of shared ecosystems. The choice and application of such approaches must be informed and guided by Strategic Environmental Assessment (SEA) for plans, policies and programmes likely to be implemented in shared ecosystems; and, or properly conducted project level EIA in order to ascertain the economic, social, and environmental costs and benefits for projects though executed within a country, but may have impacts that negatively affect. EIA and SEA are not exclusive, but cross-cutting. What are therefore practical to focus on are the likely impacts on the shared ecosystems. It is only projects that are likely to have regional effects, or impact on the shared ecosystems that should be subjected to the Regional Environmental Assessment Guidelines.

### **Objectives**

The overall project objective is to support the EAC to generate a body of regional guidelines for the proper conduct of environmental assessment for shared ecosystems of East Africa.

### **Justification for REA guidelines**

The three partner states of East Africa have signed and ratified the Convention on Biological Diversity and are thus obliged to implement its provisions including those on regional cooperation to promote the conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilization of genetic resources. More specifically, the countries have subscribed to

Article 5 that requires each Contracting Party to, “as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity”<sup>1</sup>

There is a growing urgency for the EAC to institute measures—policies, guidelines, laws and programmes—that will promote their cooperation in the conservation and sustainable use of their shared ecosystems. The member states need to develop and adopt long-term guidelines and policies to assess the impacts of economic and development activities on shared ecosystems. As parties to the Convention on Biological Diversity they are required to “Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other states or in areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate.”<sup>2</sup> EAC Partner States will fulfil their obligation under the Convention if they establish a regime of guidelines for EIA. Such guidelines are crucial for the proper conduct of impact assessment studies on shared ecosystems such as fresh water, forests and protected areas. EIA enables the identification and application of environmentally sound approaches to manage and ensure the sustainability and biophysical integrity of the shared ecosystems. The choice and application of such approaches must be informed or guided by a properly conducted environmental impact assessment. EIA will identify economically, socially and environmentally cost effective approaches.

Environmental impact assessment (EIA) is a non-linear policy process through which the environmental costs and benefits of a particular intervention or interventions are determined. It is the basis for decision-making on the environmental sustainability of development projects or activities. It constitutes an important process of economic and environmental policy.

A regional EIA, like a Strategic Environmental Assessment (SEA), is a structured, proactive process to strengthen the role of environmental issues in strategic decision making, in a fashion that is pertinent to a geographic region involving several political jurisdictions<sup>3</sup>. EIA and SEA aim to integrate environmental considerations into the earliest stages of policy and programme planning.

EIA is usually conducted in four interrelated steps: scoping, initial assessment, full assessment and EIA reviews. The scoping mission largely determines the scope and approach of EIA. It also forms the basis for mobilizing stakeholders’ participation in the

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<sup>1</sup> UNEP, 1992. *Convention on Biological Diversity*. United Nations Environment Programme.

<sup>2</sup> UNEP, 1992. *Convention on Biological Diversity*, Article 14(d).

<sup>3</sup> Tonk, J. and Verheem, R. (1998). Integrating the Environment in Strategic Decision-making: One Concept, Multiple Forms: Paper presented at the 18th Annual Meeting of the International Association of Impact Assessment; Christchurch, New Zealand.

EIA process. It identifies specific areas to be covered in the assessment, issues to be investigated, and procedures that should be followed. The initial assessment is largely a brief account of the expected impact of the project based on its location, size and the nature of proposed activities. The initial assessment enables the relevant authorities and the development project proponents to decide whether a full EIA is required. This is likely to be the case if the initial assessment indicates that the proposal will result in significant impacts.

The full EIA involves the conduct of field studies on such as aspects of the socio-economic importance of the intervention, ecological status and stability of the area, and potential impacts of the development project(s) or interventions. These studies are consolidated into one report that identifies impacts and mitigating measures.

The partner states of the EAC have varying capacities to manage EIA at the national level. These capacities—largely in the form of policies, laws, guidelines, agencies, and expertise can be harnessed and utilized for regional EIA required for the proper management of shared ecosystems. Each of the States has adopted guidelines for EIA<sup>4</sup>. These should form a solid basis for a regional regime of EIA guidelines.

Since 1996 the partner states have invested in processes to harmonize laws, policies and methodologies for EIA. This harmonization process was initiated under the auspices of a UNEP/UNDP/Dutch Project on Environmental Law, East African Sub-Regional Project coordinated by UNEP. The objective of the projective is to build capacity among the three countries to harmonize their environmental laws. The harmonization process has involved the following major activities:

- (a) A meeting of Government legal and technical experts from the three countries was held in February 1998 in Kisumu, Kenya. One of the objectives of this meeting was to promote the development of comparable legal and institutional machineries in the three EA countries in the absence of an over-arching sub-regional framework. The meeting agreed to harmonize detailed areas in the EIA process. They also agreed to draft laws on EIA at national level. Uganda has already implemented the agreed EIA law at the national level. Kenya and Tanzania have also agreed to implement their harmonized laws. A report of this effort is being published by UNEP.
- (b) Following the activity above, the Permanent Secretaries responsible for environment from the three countries met on 20 April 1998 at UNEP to adopt a “Report on the Development and Harmonization of Environmental Laws” on selected topics in environmental management. This report contains, among other things, concrete recommendations for the development and harmonization of environmental impact assessment regulations as recommended by the government

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<sup>4</sup> In Kenya, the EIA implementing agency is the National Environment Management Authority; in Uganda, implementation is by the National Environment Management Authority (NEMA); while in Tanzania, the implementation is handled by the National Environment Management Council (NEMC) and the Department of Environment in the Office of the Vice President.

experts' meeting held in Kisumu. This created ownership of the recommendations by the three governments at the highest level. The Permanent Secretaries also recommended to the then East African Cooperation (now Community) to include EIA processes as part of its programs and activities.

A "Memorandum of Understanding on Cooperation in Environmental Management" was entered into by the three governments on 22 October 1998 covering, among other areas, agreement on the development and harmonization of EIA (Article 14). Among items agreed upon was the development of common programmes on operation of EIA processes. The Memorandum of Understanding suggests strong linkages with the EAC in matters of EIA. A Protocol is to be developed to replace the MOU.

The recently concluded Treaty Establishing the East African Community has adequate provisions for conducting regional EIAs. Among the provisions, the following are important:

- (a) Article 112 (2b) calls for developing capabilities and measures to undertake EIA of all development projects, activities and programmes.
- (b) Article 112 (2j) calls for partner states to harmonize their policies and regulations for the sustainable and integrated management of shared natural resources and ecosystems.
- (c) Article 142 (i) adopted the Memorandum of Understanding on Environment, (22 October 1998) as one of the surviving instruments to be used by the Community.
- (d) Under Article 3 (2), foreign countries can be associated with or participate in any activity of the Community. Therefore, Rwanda and Burundi can effectively be included in an EIA.

Therefore, the development of guidelines for Regional Environment Assessment (REA) for shared ecosystems of East Africa would embrace: (i). SEA because of the likely joint programmes, plans, or policies in which two, or more (depending on the Ecosystem) governments of the EAC Partner States are likely to implement or propose; and (ii) project level EIAs where a project may be located a considerable distance from a national boundary, but still affect the territory of a neighboring country or the shared ecosystem as tools for environmental management. The REA would capture the broad principles and procedures that the EAC expects to guide developments in and around shared ecosystems.

### **Concepts of Shared Ecosystems**

The simplest concept of a shared ecosystem (See Figure 1) is probably where a forest, for example, spills across the common border of two parties or the contiguous borders of three parties. From an institutional standpoint the parties could be two or more communities sharing a small forest; two or more districts (in a decentralized regime of administration) or two or more sovereign states, sharing a large forest. Terrestrial ecosystems present an extended concept of cross-border or transboundary sharing of ecosystems. A forest like the Minziro-Sango Bay swamp forest ecosystem which straddles the Tanzania-Uganda border is deemed to be shared by all of them probably because the forest resources such as timber, water, medicinal plants, fisheries, non-timber

forest products have theoretical access to the sectors of all the parties. The wildlife in this case within the Minziro-Sango Bay ecosystem is thus said to respect no borders. In this respect, the riparian states do recognize the common bond or obligation of sharing the resources of the Minziro-Sango Bay ecosystem. These concepts of shared ecosystems assume practical dimensions when management implications of a given system such as a forest are considered. For example, the difficulties of generating cooperation in managing the detrimental effects of illegal harvesting of the Swamp *Podocarpus* by one of the riparian parties become clear in this case. Further, conceptual considerations on shared ecosystems stem from lacking information exchange about common resources or management opportunities constraints by riparian entities and the policy gaps that this creates. For instance, management of forest fires and the scourge of poaching and encroachment, which are common to most terrestrial ecosystems, would be one of the shared problems. The approach would reduce duplication and promote sharing of usually insufficient expertise and resources within the EAC framework. This review assumed all the definitions of shared terrestrial ecosystems discussed above. In the subsequent sections the terms, “Cross-border”, “Shared Ecosystems” and “Transboundary Natural Resources” are synonymous, i.e. resources, or ecosystems shared by two or more countries.



**Figure 1: Combined Shared Terrestrial and Aquatic Ecosystems of East Africa**